



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Ref: 8 EPR

Mr. James Christian
Division Administrator
Federal Highway Administration
2520 West 4700 south, Suite 9A
Salt Lake City, UT 84118

Mr. John Njord
Executive Director
Utah Department of Transportation
4501 south 2700 West, Box 141245
Salt Lake City, UT 84114-1245

RE: EPA Comments on Final Environmental
Impact Statement; Provo Westside Connector;
CEQ# 20110365

Dear Messrs. Christian and Njord:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, *et seq.*, Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, and Section 404 of the Clean Water Act (CWA Section 404), the U.S. Environmental Protection Agency Region 8 (EPA) has reviewed the October 2011 Final Environmental Impact Statement (FEIS) for the Provo Westside Connector (Project). The EPA is a cooperating agency on the Project and has provided technical assistance relative to NEPA and CWA Section 404 compliance and impacts to aquatic resources throughout the development of the environmental impact statement (EIS). The FEIS was prepared by the Federal Highway Administration (FHWA) and the Utah Department of Transportation (UDOT) to analyze the environmental impacts of alternatives to improve roadway system linkage in southwest Provo by constructing a new arterial roadway between Provo Airport and the vicinity of the U.S. Interstate 15 (I-15) Interchange with University Avenue and 1860 South Street.

In addition, on October 11, 2011, the White House selected this project as one of 14 "High Profile Infrastructure Projects." The goal of this initiative is to expedite environmental review through increased inter-agency coordination, agreed-upon scheduling and dispute resolution processes. Within this context, EPA has been engaged in dialogues with all involved federal agencies at the local and headquarters level. The level of detail presented in this letter is to clearly articulate our remaining concerns on this project and facilitate future dialog.

work through the Clean Water Act Section 404 regulatory requirements on an expedited schedule.

Following release of the Record of Decision (ROD), an application will be submitted to the U.S. Army Corps of Engineers (Corps) for a CWA Section 404 permit. The Corps may rely, in part, on the FEIS to meet their compliance obligations under the CWA Section 404(b)(1) Guidelines. Within the FEIS, there are a number of remaining issues related to CWA Section 404. In our interest to resolve these issues as soon as possible to avoid any delay in the permitting process, the EPA has reviewed the FEIS for consistency with CWA Section 404, and we are including our detailed comments as an enclosure to this letter.

We appreciate the opportunity to provide comments on this important project. Our principal concern focuses on available opportunities to reasonably avoid high value aquatic resources, including wetlands, in the project area. Such opportunities may involve modifications to the preferred alternative or selection of a more northerly alignment that avoids impacts to waters of the U.S. The U.S. Fish and Wildlife Service (USFWS) has recognized the significant habitat value of wetlands in the project area and has recommended that alternatives be considered that would avoid and minimize impacts to these important aquatic resources (see attached November 28, 2011 letter). Provo Bay (and its associated wetland/upland habitats) has also been identified as an "Important Bird Area" by the National Audubon Society for its substantial value to waterfowl, shorebirds, and other migratory birds. Recognizing the importance of the aquatic resources in the project area, we are eager to work quickly with the State and with our federal partners under the CWA Section 404 permitting process to identify a project alternative that improves roadway system linkage in the project area and avoids impacts to waters of the U.S. as required under the law. We think we can accomplish these goals and we look forward to a timely and effective review under the CWA.

Four alternatives are fully analyzed in the FEIS, including no action. The three action alternatives evaluated all begin at Mike Jense Parkway, (the entrance to the Provo Airport), and have the following alignments:


- University Ave. A alternative - connects to I-15 to the east side of the project alignment at University Ave. interchange and swings north at the western end of the alignment;
- University Ave. B alternative - connects to I-15 to the east side of the project alignment at University Ave. interchange and swings south at the western end of the alignment; and
- Preferred alternative, 1860 South - connects to I-15 at the 1860 South interchange.

In our August 24, 2010 comments on the Draft EIS, the EPA suggested that additional alternatives to the north within the general project area, including the Center Street Concept, be evaluated for inclusion in the FEIS and for the purposes of CWA Section 404 permitting. A limited analysis of the Center Street Concept is provided in Appendix D of the FEIS. We think these alternatives may provide a practicable opportunity to meet the project purpose and significantly reduce environmental impacts, and thus warrant additional review. We understand the potential for northern alternatives to impact existing structures, and these impacts will need

to be carefully assessed as a part of the more complete evaluation of a northerly alignment.

Thank you again for the opportunity to comment. We have enclosed our detailed comments on the FEIS for your consideration. We look forward to continued dialogue throughout the remaining CWA permit review process and a timely permit decision. If you have any questions regarding our comments, please contact me at (303)312-6340, or you may contact Suzanne Bohan, NEPA Compliance and Review Program Director at (303)312-6925, or Karen Hamilton, Wetlands and Tribal Unit Chief at (303)312-6236.

Sincerely,



Carol L. Campbell
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation

Enclosures:

EPA's detailed FEIS comments
EPA DEIS comment letter, August 24, 2010
Corps FEIS comment letter, November 15, 2011
USFWS FEIS comment letter, FHWA, November 28, 2011

Cc: Edward Woolford, FHWA
Brandon Weston, UDOT
John Higgins, UDOT
Betsy Hermann, USFWS
Jason Gipson, Corps

Enclosure - Detailed Comments

Purpose and Need /Range of Alternatives:

As we explained in our August 24, 2010 comment letter on the DEIS (attached), the EPA is concerned that the project purpose statement is too narrow for purposes of CWA Section 404 and eliminates potentially less environmentally damaging practicable alternatives. Our concern is consistent with the Corps' November 15, 2011 comment letter and USFWS's November 28, 2011 comment letter (attached). Since the early scoping of this project, the EPA has proposed a broader project purpose statement. That is "the purpose of the project is to increase east-west mobility/connectivity between East and West Provo." A broader project purpose such as this captures the intent of the proposed project to improve system linkage/connectivity, and also allows for an appropriate range of alternatives to be considered. Based upon the information provided in the FEIS, it appears that there may be several practicable alternatives immediately to the north of the three action alternatives that would further avoid, minimize, or mitigate impacts to the floodplain and waters of the U.S. and still meet this broader project purpose.

We understand the interest of the project proponent to improve system linkage and connectivity in the project area and continue to believe that alternatives to the north of the preferred alternative could serve this purpose. Based upon the rationale provided in the FEIS in Section 2.5, it remains unclear why improving and extending east-west collector roads (e.g., suggested alternatives 11 and 12), and improvement of Center Street (suggested alternative 7) did not meet the project purpose and thus were not advanced to further screening. These alternatives appear to provide connectivity to logical termini. For example, an improvement and extension of 1500 South/920 South would connect to University Ave., an arterial mapped in Figure 1-1, just to the north of the interchange. Furthermore, in this area there are two existing underpasses on 600 South and 1500 South and a new underpass under construction at 500 West. These roadways provide connectivity in the project area and could be improved to meet the project purpose. Additionally, the FEIS states "because the suggestion [12] does not include extending a roadway to the project termini, it would not meet the purpose and need for the Proposed Project." We thought that suggested alternative 12 would extend east-west collector roads to the project termini, or to the existing arterial and freeway network, in order to be consistent with the stated project purpose.

Based upon ongoing dialogue with FHWA, we understand that these alternatives were screened out, in part, because they did not meet the project proponent's functional classification to provide for system linkage (e.g., the Provo City Transportation Master Plan and Provo City General Plan do not identify these roads as arterials), despite the stated presumption in the FEIS that roadways would be improved to meet the criteria for facility type and design requirements. We are concerned that this rationale constrains the ability to consider reasonable alternatives, as this evaluation should not be limited to analyzing only the improvements or functional classification of roadways in the project area as laid out in existing transportation plans.

The EPA is also concerned that these alternatives were eliminated in an attempt to be consistent with existing local and regional transportation plans and to reduce impacts to the built

environment (page 2-21). While we understand that these are important criteria to consider under NEPA, they should not be used to screen out otherwise practicable alternatives for purposes of CWA Section 404.

Recommendation:

Based upon the information provided in the FEIS, there may be several reasonable alternatives eliminated in Level 1 Screening that may have fewer impacts to aquatic resources than the alternatives that were evaluated. We recommend the ROD include additional detail that justifies the elimination of suggested alternatives 7, 11 and 12 based upon purpose and need. Alternatively, in anticipation of a CWA Section 404 permit application, additional analyses of these alternatives may be necessary to meet regulatory requirements under the CWA Section 404(b)(1) Guidelines.

Appendix D- Center Street Concept:

While we appreciate the additional information provided in Appendix D regarding suggested alternative 7, the Center Street Concept, this alternative has not been analyzed at the same level of detail as the alternatives analyzed in the FEIS. In particular, Appendix D does not provide information on certain impact assessments and mitigation measures (page D-3), such as impacts to environmental justice communities and historic properties, or a comparable cost analysis (page D-4). With regard to possible impacts to environmental justice communities, Executive Order 12898 requires each Federal agency to identify and address the disproportionately high and adverse human health impacts of its activities on minority and low-income populations. Given the projected direct impacts of the Center Street Concept on residences and businesses, EPA believes a thorough environmental justice impact assessment of this alternative is necessary.

The FEIS concludes that the Center Street Concept does not meet the project purpose and does not appear to be a practicable alternative due to impacts on historic properties and impacts to existing development. However, the EPA believes this alternative meets the broader project purpose proposed by the EPA and the Corps. Pending additional analysis, this alternative does appear to be practicable. Based on the limited analysis presented in Appendix D for the Center Street Concept, this alternative may represent a less environmentally damaging practicable alternative to those presented in the FEIS. According to the analysis, the major impacts resulting from this alternative are relocations, noise impacts and impacts to properties eligible for historic status. Because mitigation was not discussed, the FEIS has not demonstrated that these impacts cannot be mitigated. Further, these impacts will likely occur in the future as a result of the City of Provo's plans for improving Center Street, further supporting our conclusion that this remains a practicable alternative for purposes of CWA Section 404.

Recommendations:

In anticipation of a CWA Section 404 permit application and consistent with the Corps' November 15, 2011 comment letter, we suggest expanding the analysis of the Center Street Concept so that it is equivalent to the analysis of the three action alternatives discussed in the FEIS. In this regard, we have the following suggestions:

- Analyze a reduced Right of Way (ROW) in certain areas to avoid impacts to the built environment while still meeting American Association of State Highway and Transportation Officials standards. ROW reductions could include reducing sidewalk width, eliminating the recreational trail and using the shoulder as a bike lane, and eliminating planter strips and on-street parking.
- Quantify the likely relocations and impacts to historic properties using the reduced ROW described above. Additionally, clarify whether relocations and impacts to historic properties are associated with this alternative separately or in conjunction with other proposed projects, including the I-15 reconstruction and Geneva Road Improvement projects.
- Provide cost information for construction costs, land acquisition, housing relocation, resource mitigation, etc., that are of comparable detail to the cost estimates for alternatives in the FEIS. Additionally, clarify whether project costs are separate from the anticipated costs of I-15 reconstruction and Geneva Road improvements.
- Include design elements that improve connectivity to a higher classification roadway. Similar to suggested alternative 12 above, we thought that the Center Street Concept would include improvements that extend to the project termini in order to be consistent with the stated project purpose.
- Include a more detailed analysis of Environmental Justice impacts, including identification of affected communities, analysis of impacts to the east of I-15, and potential mitigation opportunities to offset impacts. Describe plans for outreach and public comment opportunities for affected communities.
- Discuss mitigation measures for all impacts in sufficient detail to determine whether mitigation can offset the disclosed impacts.
- Ensure the practicability assessment is consistent with the CWA 404 (b)(1) Guidelines. Specifically the comparison of cost and relocations among alternatives, and the impacts to historic properties are inconsistent with EPA's and the Corps' interpretation of the regulations (see additional detail below).

Appendix D states that improvement of Center Street to five lanes is planned and consistent with the draft 2040 Metropolitan Transportation Plan (MTP) (Mountainland Association of Governments 2011). If expansion of Center Street is anticipated in the future, it is unclear why this project would be considered not practicable based upon historic impacts and impacts to existing development (page D-4). Please provide additional clarification on this issue.

Wetlands/Aquatic Resources/ Floodplains:

The preferred alternative, 1860 South, would directly impact 9.3 acres of wetlands and 1593.9 linear feet of streams, and indirectly impact wetlands in the surrounding project area. The wetlands in the project area are moderate to high functioning lacustrine emergent and palustrine emergent wetlands associated with Provo Bay of Utah Lake. The FEIS states that the contiguous wetland fringe surrounding Utah Lake provides habitat for numerous wildlife species and is especially important to birds and amphibians. Furthermore, in their November 12, 2009 letter to FHWA, the USFWS has noted that the juxtaposition of relatively disturbance-free wetlands, uplands and agricultural lands in the project area creates a habitat mosaic that is valuable to wildlife. The area includes numerous rare species, state sensitive species and species identified in

Utah's Wildlife Action Plan. Provo Bay (and its associated wetland/upland habitats) is identified as an Important Bird Area by the National Audubon Society for its substantial value to waterfowl, shorebirds, and other migratory birds. The project area also contains several springs that, although degraded, provide habitat for birds, amphibians and other water-related species in the project area.

The EPA appreciates the inclusion in the FEIS of a wetlands functional assessment and additional information on the location of and potential impacts to springs in the project area. We note that additional detail is provided on mitigation as well. However, we remain concerned with the limited information provided on indirect and cumulative effects on waters of the U.S. and floodplains, specifically related to potential hydrologic changes in the roadway corridor and effects of land use change in the project area. Please see our August 24, 2010 comment letter for more detail. Also, based upon our review of the response summary (Chapter 6), the Federal Emergency Management Agency (FEMA) apparently expressed concern about the lack of an alternative outside of the 100-year floodplain, as well as the indirect impacts of promoting development in the floodplain.

Recommendations:

In anticipation of a CWA Section 404 permit application, and consistent with the Corps' November 15, 2011 comment letter and USFWS's November 28, 2011 comment letter, we suggest additional analyses of indirect and cumulative effects to aquatic resources and floodplains be performed. Please see our August 24, 2010 comment letter for more detail. In order to avoid, minimize and mitigate for indirect and cumulative effects to wetlands and floodplains, we suggest the project proponent consider other build alternatives to the north, land use or zoning plans that avoid wetlands and floodplains, and conservation easements to protect these resources from induced development along the roadway corridor.

Water Quality

The FEIS estimated concentrations of copper, lead, and zinc that will occur in Big Dry Creek and Mill Race Creek. Copper is estimated to exceed the acute water quality standard (WQS) for aquatic life in Big Dry Creek once in three years. While no analysis of the exceedances of the chronic WQS for these metals is provided, based upon the estimated concentrations shown in table 3-41 as compared to the WQS listed in table 3-34, it appears that the chronic copper WQS may be exceeded in Big Dry Creek and the chronic lead WQS may be exceeded in both Big Dry Creek and Mill Race Creek.

Recommendations:

Exceedances of these acute or chronic WQS may constitute an impairment of WQS, depending upon the frequency and duration of the exceedance as defined in Utah's standards, and we recommend that this information be included in the Record of Decision (ROD). In addition, the WQS listed in table 3-34 for copper, lead, and zinc indicate that these apply to the total metals fraction when in fact they apply to the dissolved metals fraction of these metals. It is not clear if the concentration estimates provided in table 3-41 are for the total metals fractions. We recommend that this issue be clarified. If the FEIS is comparing total metal estimates to the dissolved metals WQS, the impairment determinations are conservative overestimates.

Mitigation:

While we recognize the efforts to minimize impacts to waters of the U.S., floodplains and water quality through design elements, we continue to think that additional design elements could further avoid impacts to these resources. If design elements could substantially reduce direct impacts to aquatic resources to a level at or below other alternatives in the project area, the preferred alternative could potentially be considered the environmentally preferred alternative.

Recommendations:

The EPA believes there are additional opportunities to further avoid and minimize impacts of the preferred alternative. These design elements may include spanning or bridging higher quality wetland areas and spring systems, reducing the width of the ROW in wetlands (e.g., by eliminating center turn lane, aesthetic amenities, recreational trails, reducing clear zones, or constructing retaining walls), and locating detention basins and trailheads outside of wetland areas. These modifications of the preferred alternative should be outlined and discussed in detail in the ROD if the preferred alternative is selected.

In the ROD, please provide a synopsis of mitigation described in the FEIS and list any commitments to assure implementation.

Clean Water Act Section 404(b)(1) Analysis:

Based upon information presented in the FEIS, the EPA thinks the potential exists for other less environmentally damaging practicable alternatives to the preferred alternative and that the preferred alternative does not sufficiently avoid, minimize or mitigate for impacts to wetlands. Even among the three action alternatives presented in the FEIS, the preferred alternative does not reflect the least environmentally damaging practicable alternative, as required for permitting under the CWA Section 404(b)(1) Guidelines. With additional avoidance measures, including bridging in the area of the interchange, it is possible that direct impacts to aquatic resources could be avoided to a point where the preferred alternative could be permitted.

Consistent with the Corps' November 15, 2011 comment letter, we remain concerned with the project proponent's interpretation of practicability under the CWA Section 404(b)(1) Guidelines, specifically related to the comparison of cost and relocations among alternatives. As we stated in our preliminary DEIS comments on June 1, 2009, project costs can be included in a practicability analysis, but should not be based on a direct comparison between alternatives. Furthermore, as we stated in our July 20, 2009 letter on Screening Criteria, consideration of logistics under the Guidelines is not intended to serve as an impact analysis with various impacts weighted and compared among alternatives. Logistical considerations under the Guidelines are intended to identify potential constraints that would make a project incapable of being done. The fact that a particular alternative will result in impacts to existing infrastructure does not alone make such alternative impracticable under the Guidelines, particularly when the alternative may significantly reduce environmental impacts. For an impact to the built environment to render a project impracticable, it would need to be unreasonable in light of the industry standard or norm for this type of project. As such, our interpretation of the Guidelines does not support a conclusion that a high level of residential or commercial relocations associated with more

northerly alignments categorically renders such alternatives impracticable. The EPA is eager to coordinate with our State and federal partners to more fully assess the practicability of a more northern alignment.

While the EPA recognizes the many advantages of relying on this FEIS for purposes of CWA Section 404 permitting, we do not believe this effort has been entirely successful, especially in light of the Corps' and the EPA's on-going requests to more fully evaluate opportunities to avoid and minimize project impacts to waters of the U.S. As a potential solution, we encourage FHWA and UDOT to consider the advantages of a "Merger Agreement" for future NEPA transportation projects that require a CWA Section 404 permit. This type of agreement, which has been adopted by numerous state transportation agencies, can define processes and procedures that assure a consistent and collaborative approach to developing a project purpose and need statement and alternatives screening that meet the requirements of both NEPA and CWA Section 404.



